

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 UNITED STATE OF AMERICA,  
10  
11 Plaintiff,  
12 v.  
13 BRIAN THOMAS SMITH,  
14 Defendant.

Case No. CR14-208RSL

ORDER ON DEFENDANT'S  
MOTION FOR EARLY  
TERMINATION OF  
SUPERVISED RELEASE

15 This matter comes before the Court on defendant's "Motion for Early Termination of  
16 Supervised Release." Dkt. # 8. Having reviewed defendant's memorandum and exhibits, the  
17 input from United States Probation Office ("USPO"), and the remainder of the record, the Court  
18 DENIES defendant's motion and instead adopts USPO's recommendation that defendant's  
19 lifetime term of supervised release be reduced to ten years.

20 Defendant pleaded guilty in 2010 to single counts of attempted possession of child  
21 pornography and destruction of evidence. Dkt. # 11 ex. C, at 1. He was subsequently sentenced  
22 to 42 months of incarceration and a life term of supervised release. Id. Since his release from  
23 prison, defendant has moved from Florida to Washington, enrolled in a Masters of Natural  
24 Resources Management program, maintained a stable residence, cultivated several healthy social  
25 relationships, and become the owner of two rental properties. Dkt. # 9 at 1-2.

26 Furthermore, defendant has completed all court-ordered counseling and continues to  
27 report twice yearly for polygraph examinations. Id. at 3. Defendant's clinical psychologist  
28 reports that defendant shows "no indication of ongoing deviant interest directed towards minor

1 females” and “is considered to be at low risk for sexual re-offense.” Defendant scored a zero out  
2 of seven on the Child Pornography Offender Risk Tool (“CPORT”) measure, meaning that he  
3 has about a 2.4% probability of sexual recidivism within five years following his initial offense  
4 in 2008. Dkt. # 9-1 at 1–3. Defendant also scored a zero out of twenty-four on the “Stable 2007”  
5 measure, meaning he has about a 1% chance of sexual recidivism within one year and a 2.6%  
6 chance within four years. Id. Defendant has no criminal history prior to the commission of the  
7 crimes for which he is now serving, and has never violated the conditions of his release. Dkt. # 8  
8 at 3.

9 Defendant’s clinical psychologist states that “it would be reasonable for the court to  
10 consider termination of federal parole supervision.” Id. at 4. Alternatively, defendant’s probation  
11 officer believes that a reduction in defendant’s supervised release to ten years from life would be  
12 more appropriate. Id. at 3. Contrary to USPO’s recommendation, the government maintains that  
13 the Court does not have the authority to reduce a term of supervision under 18 U.S.C. § 3553(e).  
14 Dkt. # 11 at 4. It argues that the statute “provides only for the early termination and discharge of  
15 a defendant or the modification, reduction, or enlargement of ‘the *conditions* of supervised  
16 release.’” Dkt. # 11 at 4 n.3 (citations omitted) (quoting 18 U.S.C. § 3553(e)(2)). In taking this  
17 position, the government has failed to consult the appropriate authority and instead bases its  
18 contention on a narrow reading of statutory language alone.

19 To the contrary, the Ninth Circuit Court of Appeals has stated that:

20 Section 3583(e) provides the district court with retained authority to revoke,  
21 discharge, or modify *terms* and conditions of supervised release following its initial  
22 imposition of a supervised release term in order to account for new or unforeseen  
23 circumstances. Occasionally, changed circumstances—for instance, exceptionally  
24 good behavior by the defendant or a downward turn in the defendant’s ability to pay  
25 a fine or restitution imposed as conditions of release—will render a previously  
imposed term or condition of release either too harsh or inappropriately tailored to  
serve the general punishment goals of section 3553(a).

26 United States v. Miller, 205 F.3d 1098, 1101 (9th Cir. 2000) (emphasis added) (quoting United  
27 States v. Lussier, 104 F.3d 32, 36 (2d Cir. 1997)). The Second Circuit further explains that:

1 In such cases, the court may invoke either subsection (1), which “works to the  
2 advantage of the defendant,” or subsection (2), which “can be employed either to  
3 the defendant's advantage or his disadvantage,” to discharge the defendant from  
4 supervised release, to modify and make less demanding the conditions of release, or  
to *reduce the length of the term of release*.

5 Lussier, 104 F.3d at 36 (emphasis added) (citation omitted) (quoting United States v. Truss, 4  
6 F.3d 437, 438–39 (6th Cir. 1993)). Moreover, the advisory committee’s note to Federal Rule of  
7 Criminal Procedure 32.1(b) asserts that “[t]he sentencing court is given the authority to shorten  
8 the term or end probation [or supervised release] early upon its own motion without a hearing.”<sup>1</sup>  
9 Fed. R. Crim. P. 32.1 advisory committee’s note to 32.1(b).

10 For the foregoing reasons, defendant’s motion for early termination of supervised release,  
11 Dkt. # 8, is DENIED. USPO’s recommended reduction to ten years from defendant’s current life  
12 term of supervised release is adopted without a hearing. The Court HEREBY ORDERS that  
13 defendant’s term of supervised release be reduced to ten years.

14  
15 DATED this 30th day of July, 2018.

16  
17 

18 Robert S. Lasnik  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>1</sup> Committee note to Rule 32.1(b), added in 1979, mentions probation only. This is because  
28 Congress did not institute supervised release until 1984. The Rule has since been renamed and amended  
to apply equally to both probation and supervised release. See 18 U.S.C. §§ 3583, 3624(e).